

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHN N. TINSLEY; NEAL GRAYSON; AND KEN)
MACK DEVELOPMENT CORPORATION, GEORGE W.)
BRIDGES, AGENT FOR CORPORATION)

COMPLAINANTS)

VS.)

CASE NO. 93-070

MUHLENBERG COUNTY WATER DISTRICT)
AND TODD COUNTY WATER DISTRICT)

DEFENDANTS)

ORDER TO SATISFY OR ANSWER

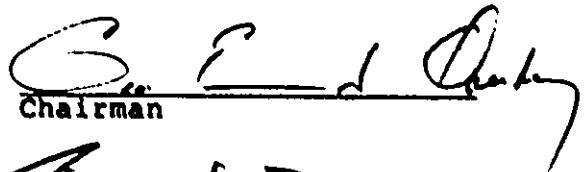
Muhlenberg County Water District ("Muhlenberg County") and Todd County Water District ("Todd County") are hereby notified that they have been named as defendants in a formal complaint filed on February 23, 1993, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Muhlenberg County and Todd County are HEREBY ORDERED to satisfy the matters complained of or to file a written answer to the complaint within 10 days from the date of service of this Order.

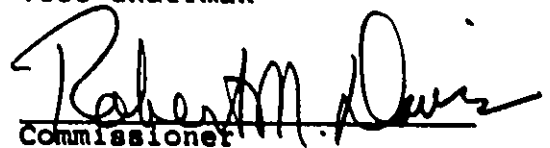
Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 8th day of March, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

The Law Firm of
CHARLES R. ORANGE
350 West Fourth Street
P.O. Box 1133
Russellville, Kentucky 42276

Charles R. Orange
Attorney at Law

February 20, 1992

Telephone 502-726-4300
1-800-995-0113
Fax 502-726-4301

RECEIVED

FEB 23 1993

PUBLIC SERVICE
COMMISSION

93-070

Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

Dear Sir Or Madam:

Please find enclosed original and ^{three}~~five~~ copies of complaint against the Todd and Mulhenberg County Water Districts for failure to supply water to my client's property.

Mr. Tinsley and his adjoining property owners deserve the opportunity to have water. The Tinsley and Grayson property sets in both Logan and Mulhenberg counties. They have water service on their Logan County property from service by the Todd County Water District. The Todd County Water District line goes within 100 feet of their adjoining Mulhenberg County property, but both districts are refusing to service the developing area in Mulhenberg County.

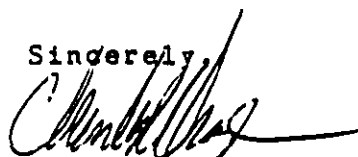
Todd County is claiming they would need to add two commissioners if they add the area of service to their district. Mulhenberg County is willing to agree to the addition of the area to the Todd County Water District. However, Mr. Tinsley (who is a registered land surveyor in Kentucky) informs me Todd County Water District is already serving five houses in Mulhenberg County.

We believe the behavior of failing to allow Ken Mack Development Corp., John Tinsley and Neal Grayson water service is arbitrary and capacious and without sound basis or reason when one considers the matter in total.

Further, it seems appropriate to grant Todd County Water District an exemption from additional water commissioners if they are in fact a real issue.

I look forward to a speedy resolution of this matter so construction of homes may begin and additional sales of lots will continue.

Sincerely,



Charles R. Orange

cc: John Tinsley

Enclosures

RECEIVED

COMMONWEALTH OF KENTUCKY

FEB 23 1993

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

John N. Tinsley; Neal Grayson; and Ken Mack Development
Corporation, George W. Bridges, Agent for Corporation

COMPLAINANT

VS.

MUHLENBERG COUNTY WATER DISTRICT

AND

TODD COUNTY WATER DISTRICT

DEFENDANTS

93-070

COMPLAINT

The Complaint of John N. Tinsley; Neal Grayson; Ken Mack
Development Corporation respectfully show:

(a) John N. Tinsley; Neal Grayson; and Ken Mack Development
Corporation; George W. Bridges, Agent for Corporation,
P.O. Box 1133, Russellville, KY 42276

(b) Muhlenberg County Water District
P.O. Box 348
Greenville, KY 42345

Todd County Water District
P.O. Box 836
Elkton, KY 42220

(c) That: John Tinsley, Neal Grayson, and Ken Mack Development
Corporation own adjoining properties in Muhlenberg County,
Kentucky. These properties are of high developmental potential
with a total of eighteen lots already sold for building of
retirement and vacation homes located between two fingers of Lake

Malone. There are a total of fifty-three lots in the joint developments to be utilized for building purposes. Four homes are scheduled to have construction underway within the next six months.

The complaining parties have tried for several months without success to get either the Todd County Water District or the Muhlenberg County Water District to provide water service to the Plaintiffs' properties. Plaintiffs are ready, willing, and able to assist with costs associated with construction and installation of said water lines to and upon their properties.

At present, Todd County Water District serves an area within Logan County that is within 100 feet of the properties of Tinsley and Grayson in Muhlenberg County. Their Logan property is served by Todd County.

The Plaintiffs have met numerous times with the board and attorneys for both districts and have received considerable correspondence stating the various positions of the respective water districts. (See attached copies of correspondence)

The Plaintiffs have little alternative but to request an intervention by the Public Service Commission. Each water district agrees that water service is a reality, but the legal process of allowing the delivery of the water to the area continues to be stifled because of lack of cooperation and ordination and statutory requirements of commissioners in multi-county systems.

Todd County Water District should be relieved of any possible responsibility of adding commissioners from Muhlenberg County by the Public Service Commission, or alternatively the Public Service Commission should Order Muhlenberg County Water District to purchase the water through a master meter from Todd County Water

District and furnish the area in of the Plaintiffs property with water service.

Further, Plaintiffs believe that Todd County Water District is presently servicing at least five lots in Muhlenberg County in Kings Cove, Section 1, therefore to now deny that water service not be available to the properties of Plaintiffs is arbitrary and capricious and without reasonable logic.

Wherefore, complainant asks water districts be ordered that water service to be extended to Plaintiff's properties at end C.C. Harris Road, (Highway 1293) being between two fingers of Lake Malone, by either the Todd County Water District, or alternatively the Muhlenberg County Water District be ordered to supply water service to the properties of the plaintiffs.

Plaintiffs further request that the P.S.C. waive any requirements that there be Muhlenberg residents placed upon the Todd County Water District Board.

All other relief to which Plaintiffs are entitled.

Dated at Russellville, Kentucky, this 19th day of February, 1993.

KEN MACK DEVELOPMENT CORPORATION

by:

George W. Bridges
GERORGE W. BRIDGES

John Tinsley
JOHN TINSLEY

Charles R. Orange
CHARLES R. ORANGE
Attorney for Complainants
P.O. BOX 1133
RUSSELLVILLE, KY 42276
PHONE: 502-726-4300

LAW OFFICES OF
GILL AND GILL
P. O. BOX 96
GILL BUILDING
ELKTON, KENTUCKY 42220

July 7, 1992

CHARLES H. GILL, JR.
TYLER L. GILL

TELEPHONE 266-5466
AREA CODE 502

Hon. Brent Yonts
114 Mill Street
P. O. Box 195
Greenville, Kentucky 42345-0195

Re: Water to Kings Cove Subdivision

Dear Brent:

As we discussed on the phone yesterday, I have been in contact with John Tinsley and his son regarding the possibility of getting water to some land and residents of Muhlenberg County, Kentucky, just across the County line from an area served by the Todd County Water District. I know that the Muhlenberg County Water District had disapproved of some earlier type of proposal to bring water to this area, but as I now understand it, the Tinsleys are willing to bear all costs of building water lines from the Todd County line. The Todd County Water District is willing to build a water line to the Muhlenberg County line and set a meter. As I had explained to you in an earlier conversation, because we are a two-county district the Statute would not allow us to serve a third county unless we annexed a certain portion of the county and appointed two Commissioners from that area. This is not what the County Water District is interested in.

I agree that there might be problems with the Public Service if the Water District attempted to sell directly to individuals in Muhlenberg County on a wholesale basis. I think they would legally have to form their own water district, and I think we can all agree that this is unnecessary.

Todd County has a similar agreement with Logan County whereby we purchase water from the Logan County District to service Allensville. They sell us water at .10 cents per 1,000 gallons above their cost, which is measured at a master meter at the county line. We own the lines in Todd County and then resell the water to our customers. This type of situation would appear to be a no-lose situation in your case since the landowners are willing to pay all of the expenses of laying the pipe.

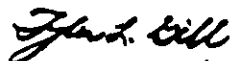
7/14/92. copied to John Tinsley

Hon. Brent Yonts
July 7, 1992
Page Two

I would appreciate very much your presenting this concept to the Muhlenberg County Water District Commissioners. If the Commissioners have any reservations, please let us know and we will be glad to work toward a resolution of this problem.

Thank you in advance for your assistance.

Yours very truly,



Tyler L. Gill

TLG/er

Muhlenberg County Water District

P. O. BOX 348
GREENVILLE, KENTUCKY 42343

August 17, 1992

Mr. John Tinsley
3207 Bucksville Road
Auburn, KY 42206

Dear Mr. Tinsley:

Please be advised that at the direction of the Muhlenberg County Water District, I have looked at the situation concerning your request to the water company to supply you water, allowing you to comply with the provisions of the line extension policy of the district and extend the line yourself or to allow the district to install a master meter at the Todd County line as suggested by Todd County.

As you know we have offered and continued to offer to release this territory to Todd County for direct service. Todd County has declined at this point.

The Muhlenberg County Water District can not agree to take on a master meter situation with Todd County for many reasons.

The district does not beleive that it can provide you with service if you hooked it up under the line extension policy, or if for any reason the district chose to and could legally provide you with service. The reason for this is the district cannot, first of all, justify an extension of its own to that area because of the cost involved and because of the present number of customers, very nominal at best, and the extreme distance involved. The distance is in excess of four miles. The other problem is that the district has no assurance that it can, with its existing system, provide the necessary pressure or volume to provide you with service. Therefore the district regretfully advises you that it cannot comply with your request in any form. The district will certainly be happy to cooperate with you, if you can persuade Todd County to provide you with water.

The only other alternative you may have would to check into the feasibility of establishing some sort of water association under the Kentucky Revised Statutes and setting up your own water company, and you buy the water from Todd County. You would have to comply of course with all the requirements of the public service comission.

I would suggest that you contact an attorney of your choice concerning this matter. If you have any questions you may feel free to contact me.

Very truly yours,

BY: Larry B. Reno
LARRY RENO, Superintendent

January 25, 1993

Engineers
Architects
Planners

624 Wellington Way
Lexington, Kentucky 40503
606-223-5894

Mr. Larry Reno
Muhlenberg County Water District
P. O. Box 348-Dean Road
Greenville, Kentucky 42345

Re: CC Harris Road Water Service Request
MSE Project No. 009500

This letter is in response to your request for us to review the service of Harris Road at Lake Malone. The following is a statement of the service request as we understand it and an analysis of serviceability.

The CC Harris Road extends north from SR107 (or Deer Lick Road) into Muhlenberg County along a ridge with a finger of Lake Malone on each side. See the enclosed map locating the proposed service area. The land is subdivided for 30 to 50 homes anticipated to be similar to the other developments along the Lake. The owners have asked both you and the Todd County Water District (TCWD) for water service.

As you know, the closest Muhlenberg County Water District (MCWD) facilities for direct service would be the main near the dam on 973 near Dunmor. Neither tie-in location offers a feasible service plan due to long distances before reaching the first customers and service elevations exceed your systems capabilities. It is not feasible for you to extend your mains to the proposed area.

The TCWD has water service to Bradley Hollow just to the south of the service area in Todd County. The mains are adequate to serve the new area and pressure is currently around 90 psi as reported by their system manager, Brent Traugher. The proposed service area lies in Muhlenberg County out of the jurisdiction of the TCWD. In order to serve the area, the TCWD would need to be granted the right for service into the county and normally the jurisdictional boundaries are revised. In some instances, according to the PSC, permission may be granted by agreement with review and approval of the Commission without permanent change to the boundaries. It is done when the grantor wants to someday regain the area for future service. I see no reason not to permanently release this small area to Todd County for service.

Since the TCWD facilities are in the area, either of you could serve the proposed area by tying into the TCWD main and extending out the ridge. TCWD can serve it directly and you could purchase water from them through a master meter and resell it as you do with Central City. Service of this area by MCWD poses the following problems:

1. The area is not contiguous with any other MCWD service area. All maintenance and operation of this small section would require travel through the TCWD service area nonproductivity. The additional travel and time are expenses not recovered in your current rates. Trips would be required for customer meter reading, system flushing, master meter reading, customer cut-off/on for non-payment, etc.

2. A purchase rate would need to be calculated by TCWD and agreed to by MCWD. TCWD currently has no wholesale rate provisions.
3. The system water quality maintenance would be MCWD's problem. The maintenance of acceptable chlorine levels would likely require regular flushing on this dead end line. No THM problems exist today as reported by TCWD but any future MCL violation may involve MCWD as owner of the distribution system.

Since TCWD serves the lower portion of the peninsula (Bradley Hollow on the west side of the lake), it seems logical that TCWD serve the area. Operation and maintenance crews will be in the area for the existing customers thereby eliminating excessive "deadhead" driving and the maintenance of water quality will be single source for simpler solutions.

Service into Muhlenberg County by TCWD requires adjustments to the system jurisdictional boundaries but not the addition of commissioners according to a PSC spokesman and KRWA attorney. The TCWD would like to serve the area but they have interpreted the regulations as requiring new commissioners from Muhlenberg County if the TCWD serves into it.

I contacted the PSC and posed the question. They selected the Engineering division for response and I spoke with them a length about the issue. The PSC will encourage the cooperation of the two Boards to revise their jurisdictions and serve the proposed area. They said that as long as the facilities in the new county did not exceed 25% of the system facilities, no new commissioners are required. I asked if this was true for "multi-county" established Districts and was assured it is applicable to all Districts.

I then called Damon Talley who is the attorney for the Kentucky Rural Water Association, the Green-River Valley Water District, Larue County Water District and possibly others beside his private practice. His knowledge of the rural water business is matched by few attorneys. He said that no new commissions are needed to extend this small amount of service into a new county. In fact, he cited several examples around the state with service into multiple counties without commissioners from the County. He would be glad to talk with you, TCWD, or their attorney, Tyler Gill.

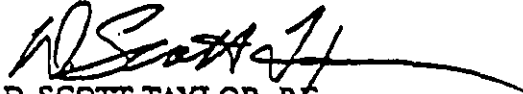
In summary, I recommended that you refer the service request to Todd County Water District. They have mains in the area with capacity to serve the routes. TCWD operates and maintains the adjacent system so the addition of the proposed customer's system can be economically operated by their same personnel. Your cooperation is needed in relinquishing the territory to Todd County.

Mr. Larry Reno
January 25, 1993
Page Three

If you need additional information, please contact us.

Sincerely,

MAYES, SUDDERTH & ETHEREDGE, INC.



D. SCOTT TAYLOR, P.E.
Vice President/Principal

DST:gwd

cc: .. Brent Traughber, TCWD
Damon Talley

7
Law Office
BRENT YONTS

Professional Service Corporation

Phone 502-332-0816

Fax 502-332-1816

P.O. Box 195 - 114 Mill Street
Greenville, Kentucky 42345

January 29, 1993

Mr. Tyler Gill
Todd County Water District
Highland Lick Road
Elkton, KY 42220

Dear Mr. Gill:

The Muhlenberg County Water District reaffirms that it will release the area in Muhlenberg County to Todd County near Lake Malone on the CC Harris Road. Our engineer has indicated that the District cannot serve this area due to pressure problems, and the District has reiterated its position that it does not desire to get into the meter business.

The main objection your District was to the potential for adding a commissioner due to the multiple county service. Our engineer checked with the PSC and also checked with Damon Talley who is the attorney for the Kentucky Rural Water Association, and both indicated to him that a commissioner would not be required in their opinion. I have not researched the matter at all, but apparently there are several multi-county districts in the state, and there is a strong belief that other commissioners would not be required. I refer you to Damon Talley for further inquiry or to the PSC legal section. If you desire for me to research it, I will, but have no desire to otherwise.

I have stated your position to the District, but hope that in the interest of helping these people Todd County will accept this portion of Muhlenberg County for service.

If you have any questions or if I can be of any service whatsoever, feel free to contact me.

Very truly yours,


BRENT YONTS, PSC

BY/jlp

cc: Muhlenberg County Water District
Scott Taylor, Mayes, Sudderth & Etheredge

PSC 564 3740

TYLER L. GILL
ATTORNEY AT LAW
GILL BUILDING
106 SOUTH MAIN STREET
POST OFFICE BOX 96
ELXTON, KENTUCKY 42320-0096
TELEPHONE: 502-268-8666
FAX: 502-268-8667

February 11, 1993

Hon. Brent Yonts
114 Mill Street
P. O. Box 195
Greenville, Kentucky 42345-0195

Mr. Larry Reno
Muhlenberg County Water District
P. O. Box 348 - Dean Road
Greenville, Kentucky 42345

Re: Water Service to Muhlenberg County Residents
by Todd-Logan County Water District

Dear Brent:

I have received your letter of January 29, 1993, and also a copy of a letter written by Scott Taylor to Mr. Larry Reno. You will find enclosed a photocopy of KRS 74.020. You will notice that § (1)(b) of the statute provides that for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. You will also notice that subparagraph (c) provides that a "single-county district" may extend its lines into another county provided that less than 25% of the total assets of the distribution system are located within the county outside the boundaries of the district.

The Todd-Logan County Water District is not a single county district. If we extended into Muhlenberg County, we would be a two-county water district extending into a third county.

I have contacted Mr. Damon Talley, attorney for the Kentucky Rural Water Association, and directed his attention to these statutory provisions. He could not provide me with any suggestions about how to avoid the specific statutory requirement that commissioners be appointed. I have also contacted Hon. Jerry Wuetchen, an attorney in the legal section of the Public Service Commission. He also was unable to provide any insight as to how to avoid this statutory requirement.

Hon. Brent Yonts
Mr. Larry Reno
February 11, 1993
Page Two

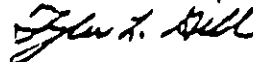
The Todd-Logan County Water District is not interested in being restructured as would be required by this statute since it would require the appointment of two new commissioners (and we would lose one we already have) to represent an area which has the potential of fewer than twenty customers.

I have attempted on several occasions to call Scott Taylor but have been unsuccessful in contacting him or in having him to return my calls. We cannot afford to serve this area in violation of the statute since any resident of the area at any time could bring suit to require that we comply with the statute and appoint them as commissioners to our Board. It may be that the engineering division of the Public Service Commission referred to by Mr. Taylor in his letter has some insight into this problem which would give us another option. We certainly do not want to allow a legal technicality to deny these people water if there is another viable option.

The only other viable option I am aware of at present would be the one suggested in my letter to you of July 7, 1992. This would require an agreement between the Todd County Water District and the Muhlenberg County Water District where the Muhlenberg County District would purchase water at the county line.

I would appreciate your reviewing this matter again and letting me know if you see any other options. I look forward to hearing from you.

Yours very truly,



Tyler L. Gill

TLG/er

pc: D. Scott Taylor, P.E.
Mayes, Sudderth & Etheredge, Inc.
624 Wellington Way
Lexington, Kentucky 40503

- Mr. Bill Bridges
P. O. Box 381A - Route 1
Belton, Kentucky 42323

Ms. Kathy Conyea
Todd County Water District
P. O. Box 836
Elkton, Kentucky 42220

TYLER L. GILL
ATTORNEY AT LAW
GILL BUILDING
106 SOUTH MAIN STREET
POST OFFICE BOX 66
ELKTON, KENTUCKY 42220-0066
TELEPHONE: 502-566-6666
FAX: 502-566-6667

February 11, 1993

Hon. Brent Yonts
114 Mill Street
P. O. Box 195
Greenville, Kentucky 42345-0195

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Mr. Larry Reno
February 11, 1993
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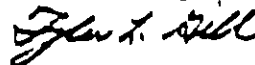
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Yours very truly,



Tyler L. Gill

TLG/er

pc: D. Scott Taylor, P.E.
Mayes, Sudderth & Etheredge, Inc.
624 Wellington Way
Lexington, Kentucky 40503

- Mr. Bill Bridges
P. O. Box 381A - Route 1
Belton, Kentucky 42323

Ms. Kathy Conyea
Todd County Water District
P. O. Box 836
Elkton, Kentucky 42220

MILLINGTON COUNTY
SERVICE AREA

LAKE MALONE STATE PARK

DESIGNED
SERVICE
AREA

PROPOSED
MOBILE SERVICE IN
BRADLEY HOLLOW (EAST BANK)

TODD COUNTY
SERVICE MAINS